

§ 200.735–125 Exemption from restrictions.

(a) *Scientific and technological information solicited by the Commission.* Communications of a former Commission employee solely for the purpose of furnishing scientific or technological information solicited by the Commission in the course of its statutory investigations are exempted from the restrictions on postemployment practices.

(b) *Exemption for persons with special qualifications in a technical discipline—*

(1) *Applicability.* A former Commission employee may be exempted from the restrictions on postemployment practices if the Chairman, in consultation with the Director, Office of Government Ethics (the Director), executes a certification published in the FEDERAL REGISTER that the former Commission employee has outstanding qualifications in a scientific, technological, or other technical discipline; that the former Commission employee is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by the former Commission employee's participation.

(2) *Certification authority.* Certification shall be by the Chairman, or in the absence thereof, by the acting head of the Commission. Consultation with the Director shall precede any certification. The exemption is effective upon the execution of the certification. The Secretary shall immediately transmit the certification to the FEDERAL REGISTER for publication.

(c) *Testimony and statement under oath are subject to penalty of perjury—*(1) *Applicability.* A former Commission employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Commission employee. This provision does not, however, allow a former Commission employee, otherwise barred under 18 U.S.C. 207 (a), (b), or (c), to testify on behalf of another as an expert witness except (i) to the extent that the former employee may testify from personal knowledge as to occurrences which are relevant to the issues in the proceeding, including those in which the Commission employee participated, utilizing his or her expertise,

or (ii) in any proceeding where it is determined that another expert in the field cannot practically be obtained, that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the former Commission employee's testimony is required in the interest of justice.

(2) *Statements under penalty of perjury.* A former Commission employee may make any statements required to be made under penalty of perjury, such as those required in registration statements for securities, tax returns, or security clearances. The exception does not, however, permit a former employee to submit pleadings, applications, or other documents in a representational capacity on behalf of another merely because the attorney or other representative must sign the documents under oath or penalty of perjury.

§ 200.735–126 Administrative enforcement proceedings.

The following are basic guidelines for administrative enforcement of restrictions on postemployment activities:

(a) *Initiation of administrative disciplinary hearing.* (1) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information does not appear to be frivolous, the Chairman shall expeditiously provide such information, along with any comments or agency regulations, to the Director and to the Criminal Division, Department of Justice. Any investigation or administrative action will be coordinated with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice informs the Commission that it does not intend to initiate criminal prosecution.

(2) Whenever the Chairman has determined after appropriate review that there is reasonable cause to believe that a former Commission employee has violated 18 U.S.C. 207 (a), (b), or (c) or implementing regulations of the Office of Government Ethics (5 CFR part 737), he or she shall initiate an administrative disciplinary proceeding by providing the former Commission employee with notice as defined in paragraph (b).

(3) The Chairman shall take all necessary steps to protect the privacy of former employees prior to a determination of sufficient cause to initiate an administrative disciplinary hearing.

(b) *Notice.* (1) The Chairman shall provide the former Commission employee with notice of an administrative disciplinary proceeding and an opportunity for a hearing.

(2) Notice to the former Commission employee must include—

(i) A statement of allegations and the basis thereof in detail sufficient to enable the former Commission employee to prepare an adequate defense;

(ii) Notification of the right to a hearing;

(iii) An explanation of the method by which a hearing may be requested; and

(iv) A copy of this subpart.

(c) *Examiner.* (1) The presiding official at proceedings under this subpart shall be an individual to whom the Chairman has delegated authority to make a recommended determination (hereinafter referred to as examiner).

(2) An examiner shall be an experienced government attorney of high moral character and sound judgment.

(3) An examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceedings may serve as an examiner in those proceedings.

(d) *Scheduling of hearing.* In setting a hearing date, the examiner shall give due regard to the former Commission employee's need for—

(1) Adequate time to prepare a defense properly, and

(2) An expeditious resolution of allegations that may be damaging to his or her reputation.

(e) *Hearing rights.* A hearing shall include, at a minimum, the following rights:

(1) To be represented by counsel,

(2) To introduce and examine witnesses and to submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument; and

(5) To obtain a transcript or recording of the proceeding on request.

(f) *Burden of proof.* In any hearing under this subpart the Commission has the burden of proof and must establish a violation by clear and convincing evi-

dence. The case of the Commission shall be presented by the Office of the General Counsel.

(g) *Recommended determination.* (1) The examiner shall make a recommended determination exclusively on matters of record in the proceeding and shall set forth therein all findings of fact and conclusions of law relevant to the matters at issue. The recommended determination shall be delivered to the parties.

(2) Within ten (10) days of the date of receipt of the recommended determination either party may submit to the Chairman exceptions to the recommended determination and alternative findings of fact and conclusions of law.

(h) *Final administrative decision.* (1) Within forty (40) days of the date of the recommended determination, the Chairman shall make a final administrative decision based solely on the record of the proceedings.

(2) In the event that no hearing is requested, the Chairman shall make a final administrative decision within forty (40) days of the date notice is provided to the former employee and the record of the proceedings shall consist of the statement of allegations as defined in paragraph (b)(2)(i) and whatever written response the former employee shall provide.

(3) The Chairman shall specify in the final administrative decision the findings of fact and conclusions of law that differ from the recommended determination of the hearing examiner.

(i) *Administrative sanctions.* The Chairman may take appropriate action in the case of any individual who is found in violation of 18 U.S.C. 207(a), (b), or (c) or implementing regulations of the Office of Government Ethics (5 CFR part 737) after a final administrative decision by—

(1) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on any matter of business for a period not to exceed five (5) years. This prohibition may be enforced by directing Commission employees to refuse to

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participate in any such appearance or to accept any such communication;

(2) Taking other appropriate disciplinary action.

(j) *Judicial review*. Any person found to have participated in a violation of 18

U.S.C. 207(a), (b), or (c) or these regulations may seek judicial review of the administrative determination. Review shall be before the appropriate United States district court.